IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1077 OF 1998.

G.M.Knitting Industries Pvt.
Ltd. & Anr. : Appellants.

versus

The Municipal Corporation of
Greater Bombay : Respondent.

Mr.S.M.Vaishnava i/by N.N.Vaishnawa & Co. for the appellants.
Mr.B.S.Bhore for the BMC/respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 24th January 2005.

ORAL ORDER.

1. Heard advocates for the appellants and the respondent/BMC. The appellant was the original plaintiff who had filed a suit before the City Civil Court vide Suit No.1094 of 1997. The same came to be dismissed on the ground that

no notice was given to the BMC and the order is, plaintiffs' suit is rejected under Order 7 Rule 11 of the Code of Civil Procedure. In fact the plaintiff had given notice which is at Exhibit J of the compilation. It is dated 21st January 1997. But when the objection was taken by the BMC, the court came to the conclusion after considering two judgments viz. one cited by the corporation-defendants i.e. **Nathubhai Dhulaji, a firm and others v. The Municipal Corporation, Bombay and others reported in AIR 1959, Bombay 132** and, another cited by Mr.Vaishnawa for the plaintiffs i.e. **Mrs.Khairunnissa A.K.Siddiki v. The Municipal corporation of the City of Bombay reported in 1965, B.L.R. page 903.** The lower Court considered both these judgments, but preferred to follow the judgment in Nathubhai Dhulaji's case and, in the second judgment that was relied upon by Mr.Vaishnawa the Division Bench held that it would appear that Nathubhai's case may require re-consideration. Till this date the said case has not been reconsidered.

2. However, the fact remains that the judgment in Khairunnissa's case is the latest in time; it was Division Bench's judgment and,

notice in that case was addressed to the Commissioner. The Division Bench held that Municipal Commissioner, being the Chief Executive Head of the Corporation had received the notice and there could be no reason to held that it was not proper notice. In this present appeal also the notice given by the plaintiff/appellant was addressed to the Commissioner of Municipal Corporation and was not addressed to any individual or to the person holding the office. It was, therefore, proper notice and, therefore, following the judgment of the Division Bench in Khairunnissa's case, I allow the appeal setting aside the impugned order and remand the case to the City Civil Court for decision according to law on merits. Interim order to continue till disposal of the suit. Suit to be decided within 8 months from receipt of this order.

[D.G.DESHPANDE]

24/01/2005 JUDGE.